

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present

Mr. Justice Md. Iqbal Kabir

And

Mrs. Justice Jesmin Ara Begum

First Appeal No.235 of 1998

With

Civil Rule No.176 (F) of 1995

IN THE MATTER OF:

Md. Nurul Islam being dead his legal
representatives:-1(a) Jarina Bewa and others
... Plaintiff-Appellants

Versus

Government of Bangladesh, represented by the
Deputy Commissioner, Joypurhat and others
... Defendant-Respondents
Mr. Mohammad Abdul Hannan, Advocate
... For the Plaintiff-Appellants
Mr. Mansur Habib, Advocate
... For the Plaintiff-Appellants
Mrs. Nahid Hossain, DAG
... For the Defendant-Respondent No.1

Judgment on: 17.12.2025

Jesmin Ara Begum, J:

Since the facts and law involved in this
First Appeal as well as in this Rule are
intertwined they are being heard together and are
disposed of by this judgment.

This appeal is directed against the
impugned judgment and decree dated 30.07.1994
passed by the learned Sub-ordinate Judge,

Joypurhat in Other Class Suit NO.7 of 1992 dismissing the Suit filed by the plaintiff-appellants under section 42 of the Specific Relief Act.

Facts in a nutshell, for disposal of this appeal and rule are that the appellants as plaintiffs filed Other Class Suit No.7 of 1992 in the Court of Sub-ordinate Judge, Joypurhat for declaration of title over 15.16 acres of land against the Government of Bangladesh in which suit the Government of Bangladesh and the added defendants contested the suit by filing separate written statement. The added defendants and other persons filed Other Class Suit No.78 of 1993 in the same Court for a decree of permanent injunction over the same suit land against the present appellants and the Government of Bangladesh. Both the suits were tried analogously and after conclusion of the trial learned the then Sub-ordinate Judge, Joypurhat dismissed both the suits by the impugned judgment and decree.

The facts of the plaint of the Suit No.7 of 1992, in brief, are that, Atul Chandra Roy and Akhay Kuymar Roy were the rayoti jotdar of suit land and C.S. khatian NO.12 was rightly prepared in their name as II. (eight anna) shares for each of them. After the death of Atul Chandra his son Mati Lal Roy and wife Charu Bala Roy being owner of the half of the property of 'Ka' scheduled land settled their whole 9.44 acres of land to Rahmatullah and his wife plaintiff No.1 Sindury Bibi by an amalnama on 15th Boishakh 1352 B.S. Before C.S. operation plaintiff's grandfather Rafatullah purchased two anna shares of Akhay Kumar measuring 2.36 acres of land and died after C.S. operation leaving behind plaintiff's father Rahmatullah and other heirs, then this Rahmatullah inherited .50 decimals of land from his father Rafatullah and Rahmatullah also purchased .50 decimals of land from his brother Ahad Ali. Hakimullah and Ibrahim purchased 4.72 acres of land from C.S. tenant Akhay Kumar and the father and mother of the plaintiffs took

patton of this 4.72 acres of land from Hakimullah and Ibrahim. By this way plaintiffs became owner and possessor of 15.16 acres of land of kha schedule of the plaint. When the then Government instituted Rent Case No.1577/55-56 against Rahmatullah for the arrear rent of the suit land, Rahmatullah then paid all of the dues on 25.03.1957 AD. Thereafter, when another rent case was initiated against this Rahmatullah for arrear rent he then filed a Suit No.168/58 in the 2nd Munshif Court of Bogura against the said C.C. Case, but without prosecuting the suit Rahmatullah paid all of the rents for the suit scheduled land on 22.09.1959 and received DCR. Though Rahmatullah was in possession of the suit land by giving rents to the government, but S.A. khatian was not recorded in his name as all of the documents and papers relating to the suit land were kept by the step brother of Rahmatullah. Then S.A. khatian was wrongly recorded in the khas khatian No.1 of the government. Rahmatullah and his wife, plaintiff

No.1 filed a case under section 143 of the State Acquisitions and Tenancy Act for correction of ROR and got part holding No.301 by the order of Mohukuma manager and paid the rents to the government. Thereafter on 02.01.1992 the concerned Tohshildar refused to accept rent from the plaintiff for the suit land and informed her that the suit land has become khas land of the government and R.S. record of the suit land has been recorded in the khatian NO.1 of the government. The Government has no right, title, possession or interest in the suit land. Thus the plaintiffs as heirs of Rahmatullah filed the suit for a declaration of title over the kha scheduled land of the plaint.

The defendant No.1, the Government of Bangladesh represented by the Deputy Commissioner, Joypurhat, contested the suit by filing a written statement denying all the materials of the plaint contending inter-alia, that the suit is not maintainable in its present form and the plaintiffs have no right, title and

possession over the suit land and the suit lands were the khas lands of the Zamindar. After S.A. operation this land vested to the Government and rightly recorded in the khas khatian No.1 of the Government. All of the papers of the plaintiffs are fabricated. Thus the suit is liable to be dismissed.

The added defendant Nos.2-4 contested the suit by filing a separate written statement contending inter-alia that, Rafatullah purchased the suit land before C.S. khatian and for this reason Rafatullah's name has been rightly recorded in the suit C.S. khatian No.12 as purchaser-possessor. Since then this contesting defendants are possessing the suit land as heirs of Rafatullah and the plaintiffs or Government have no title and possessing over the suit land. Further specific case of this defendants is that when a rent case was started for the whole land of C.S. khatian No.12 along with other lands Rafatullah paid the whole rent as per the order of rent case No.168 of 1958 and thereafter, by

giving rent and on receiving dakhila this defendants are possessing the whole suit land of kha scheduled where the plaintiffs and the Government has no right, title and interest, thus the Other Class Suit No.7 of 1992 is liable to be dismissed.

This added defendant Nos.2-4 along with other persons filed Other Class Suit NO.78/1993 for a decree of permanent injunction in respect of the same suit land against the Government of Bangladesh and the plaintiff Nos.1-9 of the Other Class Suit No.78 of 1993, who were the heirs of Rahmotullah and were transposed as the defendants of the Other Class Suit No.78 of 1993 and both the Other Class Suit Nos.7 of 1992 and 78 of 1993 were tried analogously and disposed of by the impugned judgment on 30th July 1994 by the learned trial Court, Joypurhat.

During analogous trial plaintiff No.3 of the Other Class Suit No.7 of 1992 deposed as P.W.1 and two other witnesses were examined in support of the plaintiffs' case.

On the other hand, plaintiff No.10 of the Other Class Suit No.78 of 1993, who is the added defendant of the Other Class Suit No.7 of 1992 deposed as D.W-1 and three other witnesses were also deposed in support of the defendant's claim. Upon perusing the evidences on record the learned trial Court dismissed both the suits by its impugned judgment and decree dated 30.07.1994.

Being aggrieved by and highly dissatisfied with the impugned judgment and decree dated 30.07.1994 passed by the learned Sub-ordinate Judge, Joypurhat in Other Class Suit No.7 of 1992 the plaintiff-appellants filed instant First Appeal before this Division.

Mr. Mansur Habib, the learned Senior Advocate for the plaintiff-appellants submits that without considering the facts and circumstances and without considering the oral and documentary evidences adduced by the plaintiff-appellants the learned trial Court

erroneously arrived at an erroneous view and committed error of law in dismissing the suit.

The learned Counsel further submits that the plaintiffs become successful in proving their case, especially the taking of patton by amalnama and subsequently paying rents by their predecessor Rahmatullah but the learned Court bellow without applying judicial mind failed to appreciate the documents submitted by the plaintiffs.

Per contra, Ms. Nahid Hossian, the learned Deputy Attorney General appearing on behalf of the defendant-government of Bangladesh-respondent submits that the plaintiffs of the Other Class Suit No.7 of 1992 and contesting defendants have hopelessly failed to prove their respective claim regarding the title and possession of the suit land.

The learned Deputy Attorney General further submits that the whole land of the C.S. khatian No.12 were never transferred by C.S. tenants by settlement and appellants hopelessly

failed to prove their right, title and possession over the suit land.

We have heard the submissions advanced by the learned Advocates of both the sides, gone through the impugned judgment and decree, oral testimonies of the witnesses, the documents exhibited along with the documents submitted by the parties and also perused this memo of appeal.

It is admitted by both the parties that C.S. khatian No.12 was rightly prepared. The plaintiff-appellants are praying for a decree of declaration of title over the 15.16 acres of suit land as is described in the kha schedule of the plaint. The C.S. khatian No.12 has 18.88 acres of land, out of which 15.16 acres of land of 29 plots have been mentioned in the kha schedule of the plaint and plaintiffs as heirs of Rahmatullah are claiming their title and possession over the suit land.

It is found from the plain reading of the para 1 of the plaint that plaintiffs-appellants are claiming that their predecessor Rahmatullah

acquired title over 15.16 acres of land of kha scheduled of the plaint by 3(three) different ways, Firstly that Rahmatullah and his wife Most Sundori Bibi i.e. the plaintiffs No.1 took patton of 9.44 acres of land from Mati Lal Roy and Charu Bala Roy who are the heirs of C.S. tenant Atul Chandra by an amalnama on 15th Boishakh, 1352 B.S., Secondly that, Rafatullah, the grandfather of plaintiffs, purchased 2.36 acres of land from C.S. tenant Akhay Kumar which is his 2 anna share of C.S. khatian and which is rightly recorded in C.S. khatian and after the death of Rafatullah his son Rahmatullah inherited .50 decimals of land from his father's purchased land and Rahmatullah also purchased .50 decimals land from his brother Ahad Ali; Thirdly that Rahmatullah took patton of 472 decimals of land from the purchaser of Akhay Kumar's share.

To substantiate the claim of title the plaintiff-appellants examined 3(three) witnesses, among them P.Ws 2 and 3 are examined to prove the possession of the plaintiffs in the suit land.

This 2 P.Ws though deposed in their chief that the plaintiffs are in possession of the suit land but they admitted in their cross that they do not know the khatian no. and plot nos. of the suit land, even they do not know how many plots are there in the suit land and which plaintiff possess which suit plot. P.W-3 clearly disclosed in his cross that he even does not know the number of plaintiffs and defendants and also does not know who possess which plot. So, these two PWs know nothing about the actual possession of the suit land, therefore, their testimony bears no credit.

The p.w1 is plaintiffNo.3 who though deposed in support of his plaint, but failed to support his case in his cross. P.W.1 though stated in his cross that to prove their amalnama they will examine one Bibhuty Bhushon Roy as writer of amalnama, but in reality they did not examine any writer of their predecessor's amalnama. P.W.1 also asserts that he was present at the time of patton, but he failed to produce

and examine any other persons who were present with him at the time of patton. P.W.1 clearly admitted in his cross that following the amalnama they or their predecessor did not submit any kabuliyat to the jamindary sheresta. On examining and scrutinizing the oral evidences of P.Ws it is clear that plaintiff-appellants side hopelessly failed to prove their ways of acquiring title through patton by examining supportive and corroborative necessary witnesses and also failed to prove their present possession over the suit land by examining oral evidences.

The plaintiff-appellants are claiming that their father Rahmatullah and his wife Sinduri Bibi i.e. plaintiff No.1 took patton of II. (eight anna) shares of C.S. khatian No.12 which was recorded in the name of Atul Chandra. The specific case of the appellants is that C.S. Tenant Atul Chandra being owner of 9.44 acres of land died leaving behind son Mati Lal Roy and wife Charubala Roy and then Rahmatullah and Sundari Bibi took patton of this land from the

heirs of C.S. tenant Atul Chandra by an amalnama on 15th of Boishakh 1352 B.S. It is important to note here that 15th Boishakh of 1352 B.S. means it was in the year of 1945 A.D. In the year of 1945, the tenancy of property of this region was created under Bengal Tenancy Act. At that time an amalnama was a common form of documentation used to record the relationship between landlord (Zamindar) and a tenant (raiyat). It was a record of possession and the right to cultivate and use the land, not an absolute transfer of ownership or title. Amalnama is not a formal deed of transfer as required for a valid transfer of property under the transfer of property Act, 1882.

Mr. Mansur Habib, the learned Senior Advocate appearing for the plaintiff-appellants submits that after taking patton of 9.44 acres of land by amalnama on 15th Boishakh 1352 B.S., Rahmatullah paid rent to the Zamindari Sheresta and obtained dakhila.

The learned Counsel further submits that by submitting the said amalnama and dakhila plaintiffs have become successful in proving their title and possession over the suit land. The learned counsel further submits that all the relevant documents to prove the plaintiff's case though have been submitted by the plaintiffs side through firisti, but due to negligence of the engaged lawyer of the plaintiffs these submitted relevant documents have not been properly proved and exhibited by the plaintiffs side during trial. However, by submitting a separate written statement he draws our attention to consider all of the submitted documents which are kept in the LCR.

The learned Advocate appearing on behalf of the plaintiff-appellant also contended that plaintiff's father Rahmatullah inherited .50 decimals of land from his father Rafatullah, and purchased .50 decimals from his brother Ahad Ali and also took patton of 472 decimals of land from the purchaser of C.S. tenant Akhay Kumar's share

and by this way Rahmatullah and his wife Sundari Bibi became owner and possessor of whole 15.16 acres of land as is described in the kha scheduled of this plaint and two rent cases were filed against this Rahmatullah for arrears of rent of the suit land and Rahmatullah paid khajna for all of the suit lands after opening a separate holding in his name. The learned counsel lastly submits that by the filing of rent cases against the plaintiff's father Rahmatullah, the Government authority has accepted the matter that Rahmatullah was the owner and possessor of the suit lands.

In this respect on perusing the documents submitted by firisty and exhibited documents it appears that none of the submitted documents was properly proved nor any suit registrar or information slip or any relevant supportive documentary evidence to support the alleged rent cases has been produced before the trial Court by the plaintiff appellant's side. So, filing of rent cases against Rahmatullah has not been

proved. Moreover paying rent and khajna by opening part holding does not create title in the concerned land.

It has already been discussed that P.W.1, the plaintiff No.3, stated in his cross that he was present at the time of taking potton by amalnama, but he hopelessly failed to produce any 2nd person who was present there at the very moment of execution of said amalnama. Moreover, the unilateral document of amalnama without any patta or proved dakhila it cannot legally be acceptable that Rahmatullah and his wife plaintiff No.1 Sundari Bibi took patton of 9.44 acres of land from the heirs of C.S. tenant Atul Chandra. So the plaintiffs' claim of acquiring title by way of taking patton through amalnama is not proved. Plaintiffs-appellants' claim for taking patton of 4.72 acres of land from the purchaser of C.S. tenant Akhay Kumar's share has not been proved by any kind of oral and documentary evidence. P.W.1 in his examination-in-chief claimed that one Hakimullah and one

Ibrahim transferred 4.72 acres of land to Rahmatullah and his wife on 15th Ashar 1352 B.S. by way of patton, but this said Patton was not proved by submitting any patta and kabuliyat. So, acquiring title over 4.72 acres of land by way of patton has not been proved.

On the other hand, Rafatullah's name is recorded as purchaser-possessor in the C.S. khatian No.12 for two anna share of C.S. tenant Akhay Kumar, which is amounting to 2.36 acres of land. The plaintiff-appellants are claiming in their plaint that Rahmatullah inherited .50 decimals of land from his father's share. The genuinity of the plaintiff-appellant's such a claim cannot be ascertained as the plaint as well as the P.W.1 is silent as to the description and name of the heirs of Rafatullah. Without disclosing the name of all the heirs of Rafatullah plaintiff-appellants cannot establish the claim that Rahmatullah inherited .50 decimals from his father's share. Thereafter, though as per C.S. khatian, the plaintiff's predecessor

Rafatullah was owner of 2.36 acres of land, but plaintiffs have failed to prove as to what portion of land Rahmatullah actually inherited from his father Rafatullah. Again, it is written in the plaint that Rahmatullah purchased .50 decimals of land from his brother Ahad Ali, but as per the submitted deed it appears that Rahamatullah purchased 33 decimals of land from his brother Ahad Ali, which is also supported by P.W.1's deposition.

So, only purchase of 33 decimals of land from Ahad Ali is supported by submitted deed, though it is not proved whether this Ahad Ali was entitled to sell his 33 decimals of land. So, if we think, for the sake of argument that the plaintiffs are entitled to the inherited and purchased property of Rahmatullah but it will not enable the plaintiff-appellants to get a decree of declaration of title on the whole 15.16 acres of suit land as this is not a partition suit. In a suit for declaration of title the suit land must be specified as per the provision of Order 7

Rule 3 of the Code of Civil Procedure. In the present suit, it is not legally possible to declare title of the plaintiff-appellants in respect of unspecified partial suit property relating to the inherited share of Rahmatullah and related to the purchase land from Ahad Ali.

The learned Senior Advocate appearing for the plaintiff-appellants though submitted separate petition to send the case on remand to the learned concerned trial Court for re-trial, but the learned Advocate hopelessly failed to show any sufficient reason why fresh trial or re-trial is necessary, he failed to show any additional evidence which the plaintiffs have in their hand to produce before the Court for which sending the case on remand is necessary.

Regard being had to the above discussion and observation, we do not find any illegality in the impugned judgment and decree dated 30.07.1994 passed by the learned Sub-ordinate Judge, Joypurhat in Other Class Suit No.7 of 1992, which warrants no interference by this Court.

Resultantly, First Appeal No.235 of 1998 is dismissed without any order as to costs.

The impugned analogous judgment of dismissal and decree dated 30.07.1994 passed by the learned Sub-ordinate Judge, Joypurhat in Other Class Suit No.7 of 1992 is hereby affirmed.

Since the appeal is dismissed by this judgment the connected rule being Civil Rule No. 176(F) of 1995 is discharged.

Send down the LCR along with a copy of this judgment and order at once.

Md. Iqbal Kabir, J:

I agree.